attendance benefits $268.00; (vi) employer's CPF contributions on bonus $856.00.

The following passage appears in *Kemp & Kemp*, The Quantum of Damages in Personal Injury and Fatal Accident Claims, Vol. 1 (at page 123):

"Where a plaintiff is paid wages or a salary, the loss of earnings up to the date of the trial can usually be determined by a simple calculation, and an award of special damages will be made in respect of this loss . . . . . .

Even in the case of a plaintiff employed at a fixed wage or salary, in certain circumstances it may not be possible to compensate him for his loss of earnings up to the date of trial merely by multiplying his weekly wage or salary by the number of weeks during which he could not work because of his injuries. For it is implicit in a calculation of this nature that, apart from his injuries, the plaintiff would have been employed and earning money. But if for some reason the plaintiff, apart from his injuries, might not have been able to earn money, the court must take this fact into account and award by way of damages the estimated amount of the plaintiff's probable loss of earnings."

I agree with the views expressed by the learned authors of *Kemp & Kemp*.

There is no evidence that the plaintiff's work was satisfactory or that she would be confirmed after her period of probation. It is doubtful, as I have said, if the plaintiff had not met with the accident that she would be in continuous employment. There is evidence that the plaintiff would have been retrenched in March 1984. There was a possibility of the plaintiff being laid off even before March 1984.

The figures of the plaintiff are speculative. The figure we can rely on is $1.45 per hour, the rate she was earning at the date of the accident, plus CPF. The period of loss of pay should be 3½ years, form February 18, 1980, to August 18, 1983. The total loss of earnings would be $12,697.03 and the total loss of employer's CPF contributions on loss of earnings would be $2,669.52, (I have taken the calculations submitted by Counsel for the defendant), making a total loss of $15,366.55.

(4) *Future Medication*

Counsel for the plaintiff asks for $20,000.00.

There is no evidence of how much this would cost. She only takes drugs. I would award the sum of $5,000.00.

(5) *Domestic Help*

Counsel for the plaintiff asks for $40,000.00.

The evidence is that she can lead an independent life; that she did not need nursing care. I would not award any sum.

(6) *Interest*

Counsel for the plaintiff asks for 8% interest on the award for pain and suffering and loss of amenities from the date of the writ to the date of trial and 4% interest on the award for special damages from the date of the accident until the date of trial.

Section 9 of the Civil Law Act (Cap. 30) empowers the Court to award interest on damages. The power is discretionary and has not been exercised by the Courts here in personal injury claims.

In *Ban Pet Hock* v. *Ong Ah Ho*[2] Choor Singh J. held that on principle interest should not be allowed when damages are awarded in running-down cases. I respectfully agree with Choor Singh J.

I would not award interest in this case.

The plaintiff's claim is dismissed with costs.

Claim dismissed.

Solicitors : *V. Ramakrishnan & Co.; Cooma Lau & Loh & M. Karthigesu.*

LAU SENG POH v. CONTROLLER OF IMMIGRATION, SINGAPORE

[O.C.J. (Thean J.) May 15, 1985]

[Singapore – Originating Motion No. 32 of 1984]

Administrative Law – Habeas Corpus – Detention Order against applicant by Controller of Immigration – Whether detention legal – Constitution of the Republic of Singapore, art. 9(2) – Immigration Act (Cap. 82), ss. 34(1) & 56(2) & (4).

Habeas Corpus – Application for – Detention Order – Whether detention legal.

On March 31, 1983 an Order of Removal under section 56(2) Of the Immigration Act (Cap. 81) and an Order of Detention under section 34(i) of the Act were made against the applicant by the Controller of Immigration. The Removal Order recited that the applicant had unlawfully entered Singapore and by virtue of the powers vested in him the Controller ordered the applicant to be removed from Singapore. Consequent on the order the Controller made the Detention Order for the detention of the applicant until arrangements can be made for his

return to his place of embarkation or country of citizenship. Both these orders have been challenged. The applicant, who was an infant, by his next friend, Madam Lim, applied to the High Court and obtained an Order for the issue of a *Writ of Habeas Corpus Ad Subjiciendum* directed to the Controller and Director of Prisons to produce the Applicant before the Court so that the Court may examine and determine whether the cause for his detention is legal.

According to Madam Lim the applicant was born in Singapore on October 19, 1964 and was given to her for adoption when he was about 3 months old and his natural mother was one Low Cher Chai. Madam Lim said that the baby was brought to her by her friend, Madam Yeo Ah Poi, and no birth certificate, vaccination certificate or any other document evidencing the birth of the applicant in Singapore was handed to her and that she later only managed to obtain from Madam Low the latter's identity card which she subsequently handed to the Immigration Department through her solicitor. The applicant had been brought up by Madam Lim.

The applicant had no document whatsoever to prove that he was born in Singapore in October 1964 or thereabout. He relied on (i) the evidence of Madam Lim, (ii) the fact that he studied in Ken Yiu School of No. 12, Sam Leong Road, from 1974 or 1975 to 1980; and (iii) the evidence of Madam Yeo who according to Madam Lim was responsible for bringing the applicant to Madam Lim when the former was a baby of about 3 months old.

Held, allowing the application: (1) the facts do lend support in corroborating Madam Lim's statement that during the Indonesian confrontation her husband was stranded in Indonesia, and being left alone in Singapore she decided to foster, and did foster, a baby boy and that boy was the applicant;

(2) on a totality of all the evidence, the Court was satisfied on a balance of probabilities that the applicant was born in Singapore on or about October 1964 and therefore had not entered Singapore unlawfully;

(3) accordingly both the Removal Order and the Detention Order were invalid. The Controller failed to make out a sufficient return to the writ of *habeas corpus* and the release of the applicant should be ordered;

(4) the respondents would have to pay the costs of the application.

Cases referred to:

(1) *Greene* v. *Secretary of State for Home Affairs* [1942] A.C. 284.
(2) *Liversidge* v. *Anderson* [1942] A.C. 206.
(3) *Inland Revenue Commissioners* v. *Rossminster* [1980] A.C. 952, 1011 & 1025.
(4) *Khawaja* v. *Secretary of State for the Home Department* [1984] 1 A.C. 74, 110 & 112.
(5) *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 M.L.J. 129.
(6) *Andrew* v. *Superintendent of Pudu Prisons, Kuala Lumpur* [1976] 2 M.L.J. 156.
(7) *Reg* v. *Secretary of State for Home Department, ex parte Choudhary* [1978] 3 All E.R. 790.
(8) *Zamir* v. *Secretary of State for the Home Department* [1980] A.C. 930.

ORIGINATING MOTION.

D. Ramasamy for the applicant.

S. Tiwari for the respondents.

Cur. Adv. Vult.

Thean J. : On March 31, 1983 two orders were made against the Applicant by the Controller of Immigration ("Controller"): an Order of Removal under section 56(2) of the Immigration Act (Cap. 81) (the Act) and an Order of Detention under section 34(1) of the Act. The Removal Order recited that the Applicant had unlawfully entered Singapore and by virtue of the powers vested in him the Controller ordered the Applicant to be removed from Singapore. Consequent on this order the Controller made the Detention Order for the detention of the Applicant until arrangements can be made for his return to his place of embarkation or country of citizenship. Both these orders have been challenged. The Applicant, who is an infant, by his next friend, Madam Lim Ai Choo, applied to the High Court and obtained on May 4, 1984, an Order for the issue of a Writ of *Habeas Corpus Ad Subjiciendum* directed to the Controller and Director of Prisons to produce the Applicant before the Court so that the Court may examine and determine whether the cause for his detention is legal. Pursuant to the Order the Writ of *Habeas Corpus Ad Subjiciendum* was issued and the matter now for determination is whether the detention is legal.

There is no dispute as to the authenticity of the two orders; nor was there any suggestion that they were made *mala fide*. It is the case of the Respondents that as these two orders have been validly and properly made the Applicant is lawfully detained. Mr. Tiwari on behalf of the Respondents concedes that the onus of establishing the legality of the detention rests with the Controller but this burden is discharged by producing the orders made, which on the face thereof are valid, their authenticity and good faith not being challenged or impugned. He submits that as the orders *ex facie* have been made by the proper authority in lawful exercise of the power conferred by the Act they can only be challenged on the ground of bad faith. In other words, in the absence of bad faith it is not for the Court to examine the facts on the basis of which the applicant is detained. In support, he relied on three authorities. First, he cited the case of *Greene* v. *Secretary of State for Home Affairs*[1] and

referred in particular to the following passage of the judgment of Viscount Maugham at p.295:

"I agree with what Goddard L.J. in his careful judgment said on this point, [1942] 1 K.B. 87 p.116: 'I am of opinion that where on the return an order or warrant which is valid on its face is produced it is for the prisoner to prove the facts necessary to controvert it, and in the present case this has not been done.' "

In that case the Secretary of State for Home Affairs detained one, Benjamin Greene, under paragraph (I) of regulation 18B of the Defence (General) Regulations 1939, and Greene thereupon applied for a writ of *habeas corpus*. The terms of paragraph (I) are as follows:

"If the Secretary of State has reasonable cause to believe any person to be of hostile origin or associations or to have been recently concerned in acts prejudicial to the public safety or the defence of the realm or in the preparation or instigation of such acts and that by reason thereof it is necessary to exercise control over him, he may make an order against that person directing that he be detained".

In the order he made, the Secretary of State stated that he had reasonable cause to believe that Greene was a person of hostile associations and that by reason thereof it was necessary to exercise control over him. In response to the application for a writ of *habeas corpus* an affidavit was filed by the Secretary of State to show that he had such reasonable cause to base his belief. The House of Lords held that there was ample evidence to show that the Secretary of State had such reasonable cause. It was asked, however, to express also an opinion on the question whether any affidavit by the Secretary of State was necessary, and on that it held that the production of the order of the Secretary of State, the authenticity and good faith of which were not impugned, constituted a complete answer to an application for a writ of *habeas corpus* and no affidavit by the Secretary of State justifying his cause of belief was necessary.

The decision in *Greene's* case is of no assistance here; the text of the legislation under which the Secretary of State exercised his power of detention is entirely different and is in no way comparable to section 56(2) of the Act. I have one further observation on that case. It was heard by the House of Lords immediately after it heard the celebrated case of *Liversidge* v. *Anderson*[2] and judgments on both the cases were delivered subsequently but on the same day. In *Liversidge* v. *Anderson* (*supra*) the appellant was detained by an order made by the Secretary of State for Home Affairs also under paragraph (I) of regulation 18B of the Defence (General) Regulations, 1939. The detention order stated that the Secretary of State had reasonable cause to believe that the appellant was a person of hostile associations and that by reason thereof it was necessary to exercise control over him. He brought an action against the Secretary of State claiming that his detention was unlawful and applied for particulars of the grounds on which the Secretary of State entertained his reasonable cause for his belief as stated in the detention order. The House of Lords (with Lord Atkin dissenting) held that so long as the order was made by the Secretary of State in good faith the court could not inquire whether he had in fact reasonable grounds for such belief and accordingly the appellant could not compel the Secretary of State to give the particulars. On the basis of the majority decisions in that case it must follow, as was held in *Greene's* case, that the production of the detention order made by the Secretary of State was sufficient answer to an application for a writ of *habeas corpus*. However, the majority decisions in *Liversidge* v. *Anderson* (*supra*) were not accepted subsequently by the House of Lords; it is the dissenting judgment of Lord Atkin that has been accepted: see the observations of Lord Diplock and Lord Scarman in *Inland Revenue Commissioners* v. *Rossminster*[3] and see also the judgments of Lord Scarman and Lord Bridge in *Khawaja* v. *Secretary of State for the Home Department*[4]. Having regard to this and also to the latest decision of the House of Lords in the *Khawaja's* case (*supra*), to which I shall later advert, it seems to me doubtful whether the decision in *Greene's* case on the point, namely: that the production of the Secretary of State's order, its authenticity and good faith not in any way being impugned, "constitutes a complete and peremptory answer" in a return to a writ of *habeas corpus*, can still stand.

Next, Mr. Tiwari relied on the case of *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri Malaysia*[5]. The relevant statute in that case under which the Minister of Home Affairs acted in making the detention order against the applicant, Karam Singh, is section 8(1) (a) of the Internal Security Act, No. 18 of 1960, which is as follows:

"8. (1) If the Yang di-Pertuan Agong is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister shall make an order –

(a) directing that such person be detained for a period not exceeding two years"

The order of detention recited that the Yang di-

Pertuan Agong was satisfied with respect to the applicant that with a view to preventing that person from acting in a manner prejudicial to the security of Malaysia, maintenance of public order therein and maintenance of essential service therein it was necessary to make the detention order. The grounds for detention were made out and were served on the applicant. It was held by the Federal Court of Malaysia, *inter alia*, that the applicant's detention had been made in exercise of valid legal power and the onus lay on the applicant to show that the power had been exercised *mala fide* or improperly. That case is again of no assistance; the statutory provision on which the executive relied in making the detention order is entirely different from the provision of section 56(2) of the Act. It should also be noted that the Federal Court in arriving at the decision on the point just mentioned relied on *Liversidge* v. *Anderson* (*supra*). Suffian, F.J. (as he then was) said at p.152:

"In my judgment, the onus of proving the legality of the detention is on the Minister in the first instance. This he can discharge simply by producing the order of detention which, if its authenticity and good faith are not impugned, is a sufficient answer. If the detainee alleges *mala fides*, as he does here, then the onus shifts to him and it is for him to prove *mala fides*. For this proposition there are two House of Lords decisions".

The two decisions on which he relied are the majority's decisions in *Liversidge* v. *Anderson* (*supra*) and the decision in *Greene* v. *Secretary of State for Home Affairs* (*supra*) which I have already discussed.

Lastly, Mr. Tiwari relied on *Andrew* v. *Superintendent of Pudu Prisons, Kuala Lumpur*[6] in which the Principal Assistant Director of Immigration, Malaysia, made a removal order under section 56(2) and a detention order under section 34(1) of the Immigration Ordinance. These provisions are *in pari materia* with sections 56(2) and 34(1) respectively of the Act. On the facts before the Court there was no question that the removal order was validly made and one of the issues before the Court was whether the detention order remained valid since the immigration authorities were unable to remove him from Malaysia. On that issue, it was held that the detention order remained valid until it was revoked. In the course of his judgment, however, Suffian L.P. made the following pronouncements at p.158:

"As has been laid down in this court in *Karam Singh* v. *Minister of Home Affairs* when a person complains that he is being illegally or improperly detained, it is for the detaining authority to justify the detention. In the ordinary way, he would produce an order of detention. If the person who signed that order had power to do so and had before, when and after signing that order, complied with all conditions laid down by the law, then the order of detention which is authentic and made in good faith is a sufficient answer, and the court must hold the order and detention lawful – unless the detainee alleges and can prove *mala fides*. In the instant case the detaining authority had power to detain the appellant, he had complied with the law in every way and therefore the order of detention was perfectly valid".

The above passage was relied by Mr. Tiwari but in my view it is clearly an *obiter*.

I am unable to accept Mr. Tiwari's argument that in this case the mere production of the Removal Order and Detention Order which are *ex facie* valid and regular affords a complete answer in the Respondents' return to the writ of *habeas corpus* and that the Court cannot go further to examine whether the Controller was in fact justified in making the orders. If Mr. Tiwari is right, then judicial review of the decision of the executive in exercising such a draconian power of removal and detention under the Act would be precluded practically in all cases. Such drastic deprivation of rights of those subject to the Act to have recourse to courts for judicial review cannot have been intended by the legislature, and indeed there is nothing in the Act to vouch for such a conclusion.

In *Khawaja* v. *Secretary of State for the Home Department*[4] the scope of judicial review of the executive's decision to remove and detain an illegal entrant was exhaustively reviewed and discussed. In that case there were actually two appeals before the House of Lords, namely: *Reg.* v. *Secretary of State for the Home Department ex parte Bohar Singh Khera* and *Reg.* v. *Secretary of State for the Home Department, ex parte Khawaja*. Under paragraph 9 of Schedule 2 to the United Kingdom Immigration Act, 1971 where an illegal entrant is not given leave to enter or remain in the United Kingdom an immigration officer may give direction for his removal, and unless such direction is given the power of detention under paragraph 16 of the said Schedule does not arise. In both cases the respective directions were made under paragraph 9 and the appellants were detained under paragraph 16. Both appeals were heard together by the House of Lords as the same questions of principle were involved. The House of Lords unanimously held, *inter alia*, (i) that on an application to the Court for judicial review for a *habeas corpus* it was the duty of the Court to enquire whether there had been sufficient evidence to justify the immigration officer's decision that the entry

of the person concerned had been illegal; (ii) that on an application for judicial review it was for the executive to prove to the satisfaction of the Court on the balance of probabilities the facts justifying the detention. In arriving at this conclusion the House of Lords in effect re-established "the well-established principle that, where the exercise of an executive power depends upon the precedent establishment of an objective fact, it is for the court, if there be a challenge by way of judicial review, to decide whether the precedent requirement has been satisfied" (per Lord Scarman at p.108).

Mr. Tiwari further submits that the principles in *Khawaja's* case are not applicable as they are based on the United Kingdom Immigration Act, 1971, but the principles in *Reg.* v. *Secretary of State for Home Department, ex parte Choudhary*[7] and *Zamir* v. *Secretary of State for the Home Department*[8] should apply as they are consistent with the scheme of our Immigration Act. Such an argument is plainly wrong. In *Reg.* v. *Secretary of State for the Home Department, ex parte Choudhary*[7] the applicant was detained as an illegal entrant into the United Kingdom under the Immigration Act, 1971 and he applied for a writ of *habeas corpus* to the Division Court which dismissed the application. On appeal the Court of Appeal dismissed the appeal and Lord Denning said, at p.792:

"I start with this. The order for his detention and removal was completely in order. The return, on the face of it, affords sufficient justification for his detention and removal from the United Kingdom. It is prima facie good. If that return is to be challenged, it is for him to challenge it. The burden is on him to show that he is being unlawfully detained. That appears from many cases which we have had in these courts."

That statement of law cannot now stand in the face of the decision in *Khawaja's* case. In *Zamir* v. *Secretary of State for the Home Deparment* (*supra*) the applicant obtained entry into the United Kingdom by deception and it was decided, *inter alia*, that the decision of the Secretary of State to remove and detain the applicant could only be attacked if it could be shown that there had been no grounds on which the Secretary of State could have acted or that no reasonable person could have decided as he had done. The decision on this point was reversed by the House of Lords in the *Khawaja's* case.

In the instant case, the Removal Order dated March 31, 1983 was made under section 56(2) of the Act, which is in the following terms:

"(2) Any person unlawfully entering or re-entering or attempting unlawfully to enter or re-enter Singapore or unlawfully remaining in Singapore shall whether or not any proceedings are taken against him in respect of such offence be liable to be removed from Singapore by order of the Controller."

The Order was made on the basis that the Applicant has unlawfully entered Singapore, and for the reason I have given the decision of the Controller in making such an order is subject to judicial review and the court has a duty on an application by the person affected by this order (whether for a judicial review or *habeas corpus*) to examine the facts to determine whether his decision was justified. In this connection, Mr. Tiwari prayed in aid sections 6(1), 7(2) and 56(4) of the Act which is his submission shift the burden of proof to the Applicant. Sections 6(1) and 7(2) are of no assistance. Section 6(1) is wholly irrelevant: it provides that no person other than a citizen of Singapore shall enter Singapore unless he comes within any of the categories of persons specified in paragraphs (a), (b), (c) or (d) thereof. Section 7(1) provides that a citizen of Singapore is entitled to enter Singapore without having obtained a permit or pass and section 7(2) imposes the burden of proof that a person is such a citizen on that person. But this is not a case where the Applicant is making a claim that he is a citizen of Singapore – certainly not at this stage. Section 7(2) therefore is also not relevant.

I next turn to consider whether section 56(4) is applicable, and the answer here is less straightforward. Section 56(4) provides as follows:

"(4) Where in any proceedings under this Act or any regulations made thereunder it is proved that the defendant has failed to produce on demand by an immigration officer or a police officer –

(a) any valid permit, pass or certificate issued to him under this Act or any regulations made thereunder; or

(b) any other document accepted by the Controller as evidence that the defendant has entered or remained in Singapore lawfully; or

(c) any other evidence showing to the satisfaction of the Controller that the defendant is exempted from the provisions of subsection (1) of section 6 of this Act,

it shall be presumed, until the contrary is proved, that he has as the case may be entered or re-entered or remained in Singapore unlawfully."

For section 56(4) to operate the proceedings must be one under the Act or regulations made there-

under. If they are not, it must follow the Controller will not have the benefit of that section. The answer to this question therefore turns on the construction of the words, "any proceedings under this Act". Strictly speaking there are no such proceedings as "proceedings under the Act"; the Act does not prescribe any specific proceedings. It prescribes offences against the Act and clearly proceedings initiated for offences against the Act come within the ambit of section 56(4). Such proceedings involve a determination of the relevant provisions under the Act. I was at first attracted by the argument advanced by Mr. Ramasamy on behalf of the Applicant that section 56(4) is inapplicable here as the proceedings were not instituted under the Act; they were instituted independently of the Act and therefore do not fall within the ambit of section 56(4). On further reflection I think this argument is unsound. The present proceedings before me, like proceedings instituted for offences against the Act, also involve a determination of a question under the provisions of the Act: whether the Controller on the basis of evidence before him was justified in making the Removal Order under section 56(2) of the Act. I agree with Mr. Tiwari that the whole scheme of the Act in relation to the burden of proof is such as to lead to the irresistible conclusion that section 56(4) applies to any proceedings involving any question under the Act. The matters contemplated in section 56(4) are especially within the knowledge of persons concerned and it seems to me clear that it is the intention of the legislature that such persons should accept the burden of proving them. For these reasons I am of the opinion that section 56(4) applies and the burden is on the Applicant to prove that he has not unlawfully entered Singapore.

I now turn to examine the facts to determine whether the Applicant has discharged the burden of proof and this must be ascertained on the totality of the evidence before me. Numerous affidavits have been sworn or affirmed and filed by Madam Lim Ai Choo, the next friend of the Applicant ("Madam Lim"), on behalf of the Applicant and Mr. Ho Bak Khee, the deputy controller of immigration, both deposing not only to facts but arguments and counter-arguments, most, if not all, of which should have been avoided in affidavits. No application was made to cross-examine Madam Lim or Mr. Ho on her or his affidavits filed and in the circumstances I have to form my own conclusion on the facts which I can gather from the affidavits and the inferences which I can properly draw therefrom. To my mind, there clearly emerged from affidavits, the following facts which are not in dispute. Madam Lim is a Singapore citizen and married one, Lau Ah Kum, an Indonesian according to Chinese rites in 1961 and their marriage was registered with the Registry of Marriage, Singapore on June 26, 1974. They have four children and Madam Lim said that they were all born in Singapore, namely:

(i) Lau Siew Eng born on July 18, 1966,

(ii) Lau Siong Lai born on May 29, 1970,

(iii) Lau Siew Kang born on April 14, 1972; and

(iv) Lau Seng Hock born on May 24, 1974.

In respect of her first two children she applied for late registration of their births in August 1974 and their birth certificates were issued in September 1975. She obtained a Singapore passport in March 1975 and since then had travelled to the Riau Islands, Indonesia, regularly, where presumably her husband was working. Madam Lim said that during the Indonesian confrontation her husband was stranded in Indonesia, but she remained in Singapore. The Applicant attended a private school, Keu Yiu School, at No. 12, Sam Leong Road and studied in that school from 1974 or 1975 to 1980. Thereafter, he could not obtain any permanent work and was employed as a daily rated construction worker. In 1980 Madam Lim brought him to the National Registration Office with a view to obtaining an identity card. A special pass was issued to the Applicant, pending investigation by the Immigration Department. The special pass was renewed continuously until March 31, 1983 when he was detained.

The matters which have been seriously disputed by the Controller are the following allegations of Madam Lim. According to Madam Lim the Applicant was born in Singapore on October 19, 1964 and was given to her for adoption when he was about 3 months old and his natural mother is one Low Cher Chai. Madam Lim said that the baby was brought to her by her friend, Madam Yeo Ah Poi, and no birth certificate, vaccination certificate or any other document evidencing the birth of the Applicant in Singapore was handed to her and that she later only managed to obtain from Madam Low the latter's identity card which she subsequently handed to the Immigration Department through her solicitor. The Applicant has been brought up by Madam Lim.

The Applicant has no document whatsoever to prove that he was born in Singapore in October 1964 or thereabout. However, he called in aid other evidence to establish this fact. He relied on:

(i) the evidence of Madam Lim, (ii) the fact he studied in Kew Yiu School of No. 12, Sam Leong Road, from 1974 or 1975 to 1980, and (iii) the evidence of Madam Yeo Ah Poi who according to Madam Lim was responsible for bringing the Applicant to Madam Lim when the former was a baby of about 3 months old. This evidence the Controller rejected, and his grounds for so doing are mainly as follows:

(a) the contradictory or inconsistent statements given by Madam Lim to the immigration officers on different occasions and in her affidavits;

(b) the refusal or failure of Madam Lim or the Applicant to produce, until at a very late stage, the old identity card of Madam Low Cher Chai who according to Madam Lim is the natural mother of the Applicant;

(c) the two baptism certificates dated January 2, 1965 and December 27, 1969 in respect of the two persons, Susanna Lau A Moi and Franciskus Lau Seng Lai respectively;

(d) the smallpox vaccination scars appearing on the left arm of the Applicant;

(e) the contradictory statements of Madam Yeo Ah Poi who was alleged to have handed the Applicant to Madam Lim when he was only 3 months old.

In so far as the evidence of Madam Lim is concerned the deputy controller said she made various contradictory and inconsistent statements. In 1980 just before she called at the National Registration Office with the Applicant with a view to obtaining an identity card for the Applicant she enlisted the service of a petition writer who prepared the statutory declaration (Exhibit "HBK-2") which she declared. The content of that document is not absolutely correct. However, I need not have to stretch my imagination to say that documents prepared by petition writers are not infrequently incorrect; it is not expected of them to demonstrate the standard of skill and thoroughness as that of an solicitor in preparing documents. Thereafter, a statement from her (Exhibit "HBK-3") to an immigration officer was recorded, and the recording of that statement by the officer concerned was not satisfactory also. It was not done with any great care, and did not even have the name of the recording officer and the date on which the statement was given. I was told that it was recorded on February 5, 1980. The deputy controller seized on a statement she made therein, namely: that she did know where the Applicant was born, and said that she "changed her story". That this statement was not exactly what she said earlier in the statutory declaration is true. But I do not see why such a statement should be so incredible. She never saw the Applicant when he was born. According to her the Applicant was brought to her when he was three months old. In terms of actual knowledge obviously she did not know where he was born, but obviously also in the circumstances she concluded, as a matter of probable inference, that he was born in Singapore.

Two years after she had given her first statement she was called to the Immigration Office and she gave a second statement on June 18, 1982. She appeared to have been asked to repeat the history of the matter. She was obviously questioned and presumably in answer to questions put to her, the statement was given and recorded. That statement was not wholly inconsistent with the first. It amplified what she had said earlier: the circumstances in which the Applicant was given to her by his natural mother. There were of course some additions or variations but they are of no material significance. Then one year later she was called upon again to give yet a further statement at the Immigration Office: that was on June 14, 1983. From the statement taken it appears that she was subject to interrogation: she was warned to speak the truth and was "pressed" on why she made certain previous statements which were not consistent or were contradictory. She appeared to have been asked to give again an account of how the Applicant was given to her custody when he was a baby. Substantially she adhered to her previous statement: that a lady brought the baby to her and she "adopted" him and she repeated that she did not know where the Applicant was actually born. There were discrepancies between that statement and the previous ones but again they are not really of a material nature.

In considering her statements one has to be realistic and bear in mind these factors. She is an illiterate woman and her husband is an Indonesian seaman working abroad most of the time. The burden of bringing up the family must have fallen on her principally. The events which she recounted and on which she was questioned took place more than 15 years ago; memory or recollection thereof must be vague. These statements were taken down spasmodically by different immigration officers over a period of three years with lengthy intervals in between and she had no record of what she said previously. They must have been given in answer to questions and Madam Lim could only answer what

she was asked. Hence, if there were any gaps arising in any of her statements it may not be due to any wilful or deliberate suppression of facts but to the inadequacy of the questions asked. In the circumstances that have occurred I am not in the least surprised that there were inconsistencies and contradictions in the statements she gave. On review of all these statements and her affidavits I do not find that their discrepancies are such as to justify a total rejection of the statements as incredible.

The Controller next complained that Madam Lim refused or failed to produce the identity card of Madam Low Cher Chai who according to Madam Lim was the natural mother of the Applicant. I do not see how the Controller can really make a case out of such failure or delay on the production of the identity card. Nor do I agree that by reason of such failure or delay the proper inference to be drawn is that that Madam Lim could not produce it in 1980 when investigation first started and that she came into possession of this document much later. To me the explanation she gave is not really all that incredible in her case: she was advised that it would be an offence to keep another person's identity card, and therefore she refrained from producing it. Persons in her circumstances must have sought advice from all sorts of people, rightly or wrongly. At any rate, it is significant that when she handed the identity card to her solicitor and instructed him to trace the record at the National Registration Office, she had no idea at all at that time that there was no record of the holder thereof: see exhibits "LAC 6" and "LAC 7". If she had taken the identity card of a person who had died or left Singapore and concocted the story that it was the identity card of the natural mother of the Applicant, she would at once put herself at grave risk if it is discovered from the data in the National Registration Office that such a person could not in any circumstances be the natural mother of the Applicant.

The Controller relied very heavily on the two baptism certificates which his officers obtained when they raided the house of Madam Lim, copies of which are exhibited as "HBK-6". The two baptism certificates show that two persons, Susanna Lau A Moi born on October 20, 1964 and Franciskus Lau Seng Lai born on July 6, 1969 were baptised on December 15, 1964 and November 3, 1969 respectively in Indonesia. It is the case of the Controller that these two documents are the baptism certificates of the two older children of Madam Lim, namely: Lau Siew Eng and Lau Siong Lai; and since Lau Siew Eng was born in Indonesia on October 20, 1964, Madam Lim could not be in Singapore in January 1965 or thereabout to receive the Applicant; therefore the account of Madam Lim that she received the Applicant at or about that date cannot be true. That conclusion of the Controller on reflection leaves a number of questions unanswered. First, Madam Lim applied in August 1974 for late registration of the births of the 2 older children and their dates of birth as registered were July 18, 1966 and May 29, 1970. If these 2 children were born on October 20, 1964 and July 6, 1969 respectively there is no reason why these dates could not be so registered as their dates of birth respectively, as Madam Lim had at that time records of their births, namely: the baptism certificates. Secondly, if these two children were born in Indonesia, when were they brought into Singapore? There is no evidence when and how they entered Singapore. There is no suggestion that they were brought into Singapore clandestinely. Thirdly, the Controller said Madam Lim obtained her passport in March 1975 and "commenced travelling openly to Riau Islands regularly"; the Controller produced a record of her trips to Riau Island: see Exhibit "HBK-12". By implication the Controller conceded that Madam Lim did not have a passport prior to March 1975. As to whether she did travel to Riau Islands clandestinely there is no evidence whatsoever. Assuming that she was in Indonesia and gave birth to her first child, Lau Siew Eng on October 20, 1964, there is no evidence as to how and when she entered Singapore thereafter. Lastly, it should also be remembered that during the period approximately between September 1963 and September 1965 there was the Indonesian confrontation and one could not really travel freely between Indonesia and Singapore. Therefore Madam Lim's statement that during the Indonesian confrontation her husband was stranded in Indonesia and she remained in Singapore has a ring of truth and that statement was not really challenged or disputed. In view of these questions I have very serious doubts whether the documents are truly the baptism certificates of the two older children of Madam Lim. I therefore reject these two documents.

The Applicant has two smallpox vaccination scars on his left arm which according to Dr. Kumarapathy were consistent with smallpox vaccination done by the scarification method using a lancet which method was in vogue in Singapore up to mid 1950s and was practised in Indonesia up to late 1960s. All that Dr. Kumarapathy could say was that the scars on the Applicant were similar to the scars he saw "in older Indonesian children in April

1974". This piece of circumstantial evidence is equivocal and is not entirely satisfactory, as Dr. Kumarapathy himself could not exclude the possibility of doctors using the old vaccination method here at the material time.

Lastly, the Controller contends that the statements of Madam Yeo Ah Poi should not be accepted as they are self-contradictory. Madam Yeo made a statutory declaration on April 29, 1983. In that declaration she said, among other things, that sometime in mid-1964 she was working as a washerwoman for Madam Low Cher Chai, an unmarried expectant mother and was asked to find a person to adopt the latter's baby, that she found that Madam Lim was interested in adopting a baby, that later a baby boy was born to Madam Low and that she (Madam Yeo) brought the baby to Madam Lim. Arising from this statutory declaration she was interrogated by an officer at the Immigration Department and a statement was taken from her on June 24, 1983. That statement did not fully tally with what she said earlier in her statutory declaration. However, one point is distinctly clear and remains uncontradicted: in a "year forgotten" she was the washerwoman working for an unmarried expectant mother at Syed Alwi Road who gave birth to a baby boy and she, Madam Yeo, brought the baby to Madam Lim. Of course Madam Yeo now cannot say that the applicant is the boy she brought to Madam Lim, as Madam Lim and her family had moved from the neighbourhood where Madam Yeo was staying soon after the boy was handed to Madam Lim. I can see no reason why Madam Yeo should have spun a lie for Madam Lim or the Applicant, having regard to the inconvenience she has been subjected to.

There is one further point raised in the affidavit of the deputy controller which I have also considered: Madam Lim applied for late registration of births of her first two children in August 1974 and it is a curious fact that no similar application for late registration of the birth of the Applicant was made. This therefore gives rise to an inference that either the Applicant was not in Singapore at that time or that the applicant was not born in Singapore. I agreed that this is one inference that can be drawn. However, there are other explanations which are equally plausible. First, as has been admitted there is no document such as birth certificate or vaccination certificate, evidencing the birth of the Applicant in Singapore and Madam Lim could not have succeeded in obtaining a late registration of his birth. Secondly, in her case, where the burden of bringing up the family principally rested with her it is not surprising or unexpected that her own children's welfare would take priority over such a matter concerning the birth of the Applicant, who is merely her foster-child, with the result that such a matter was not attended to until it was much too late to do so.

Stripped of all the arguments, counter-arguments and conjectures contained in the numerous affidavits filed the following facts seem to me to be clear:

(a) The absence of any fact or circumstance which indicates that the Applicant was brought into Singapore clandestinely.

(b) Madam Yeo many years ago handed a baby boy to Madam Lim to foster soon after his birth.

(c) The Applicant was admitted to and he studied in Keu Yiu School, Singapore from 1974 or 1975 to 1980.

These facts do lend support in corrobrating Madam Lim's statement that during the Indonesian confrontation her husband was stranded in Indonesia, and being left alone in Singapore she decided to foster, and did foster, a baby boy and that boy is the Applicant. On a totality of all the evidence and an analysis thereof I am satisfied on a balance of probabilities that the Applicant was born in Singapore on or about October 1964 and therefore has not entered Singapore unlawfully.

Accordingly the Removal Order made is invalid and it follows that the Detention Order is also invalid. In the result the Controller failed to make out a sufficient return to the writ of *habeas corpus* and I order the release of the Applicant. The Respondents will have to pay the costs of the application and occasioned by the issue of *habeas corpus*.

Application allowed.

Solicitors : *D. Ramasamy & Co.*